

STATE OF WISCONSIN

Department of Industry, Labor & Human Relations

In the Matter of the PECFA Appeal of

Harold Koeffler
Koeffler Chevrolet
915 Main St.
Mukwonago WI 53149

PECFA Claim #53149-1729-15
Hearing #94-47

Final Decision

PRELIMINARY RECITALS

Pursuant to a petition for hearing filed August 31, 1994, under §101.02(6)(e), Wis. Stats., and §ILHR 47.53, Wis. Adm. Code, to review a decision by the Department of Industry, Labor and Human Relations, a decision on a motion to dismiss was issued by the administrative law judge.

The issue for determination is:

Whether appellant's request for hearing on the denial of reimbursement for laboratory charges should be dismissed because the request for hearing was not filed within 30 days of the issuance of the decision being appealed, as required by §ILHR 47.53(l)(b), Wis. Adm. Code.

There appeared in this matter the following persons-.

PARTIES IN INTEREST:

Harold Koeffler
Koeffler Chevrolet
915 Main St.
Mukwonago WI 53149-
By: Harold Koeffler

Department of Industry, Labor and Human Relations
201 East Washington Avenue
P.O. Box 7946
MADISON WI 53707-7946
By: Kristiane Randal
Assistant General Counsel
P.O. Box 7946
Madison WI 53707-7946

The administrative law judge issued a Proposed Decision dated April 21, 1995, and the parties were provided an opportunity to file objections. The authority to issue a final decision in this matter has been delegated to the undersigned by order of the Secretary dated October 20, 1995.

The matter now being ready for decision, I hereby issue the following

FINAL DECISION

The Proposed Decision dated April 21, 1995, is hereby adopted as the final decision of the department.

NOTICE TO PARTIES

Request for Rehearing

This is a final agency decision under §227.48, Stats. If you believe this decision is based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not have discovered sooner through due diligence. To ask for a new hearing, send a written request to Department of Industry, Labor & Human Relations, Office of Legal Counsel, P. O. Box 7946, Madison, WI 53707-7946.

Send a copy of your request for a new hearing to all the other parties named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the hearing examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing.

If you do not explain how your request for a new hearing is based on either a mistake of fact or law or the discovery of new evidence which could not have been discovered through due diligence on your part, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes

Petition For Judicial Review

Petitions for judicial review must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The petition for judicial review must be served on the Department of Industry, Labor and Human Relations, Office of Legal Counsel 201 E. Washington Avenue, Room 400x, P. O. Box 7946, Madison, WI 53707-7946.

The petition for judicial review must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for judicial review is described in Sec. 227.53 of the statutes.

Dated and mailed: November 27, 1995

Richard C. Wegner, Deputy Secretary
Department of Industry, Labor & Human Relations
P O Box 7946
Madison WI 53707-7946

cc,. Parties in Interest

STATE OF WISCONSIN
BEFORE THE
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

IN THE MATTER OF: The claim for
reimbursement under the PECFA
Program by

MADISON HEARING OFFICE
1801 Aberg Ave., suite A
P.O. Box 7975
Madison, WI 53707-7975
Telephone: (608) 242-4818
Fax: (608) 242-4813

Koeffler Chevrolet, Pontiac, Geo, Inc.
915 Main Street
P.O. Box 225
Mukwonago, WI 53149

Re: PECFA Claim # 53149-1728-15
Hearing Number: 94-47

AMENDED PROPOSED RULING ON MOTION TO DISMISS

NOTICE OF RIGHTS

Attached is the Proposed Ruling on the Motion to Dismiss in the above-stated matter. Any party aggrieved by the proposed decision must file written objections to the proposed ruling within twenty (20) days from the date the Proposed Ruling is mailed. It is requested that you briefly state the reasons and authorities for each objection together with any argument that you would like to make. Send your objections and argument to: Madison Hearing Office, P.O. Box 7975, Madison, WI 53707-7975. After the objection period, the hearing record will be provided to Patrick J. Osborne, Deputy Secretary of the Department of Industry, Labor and Human Relations, who is the individual designated to make the FINAL Decision of the Department of Industry, Labor and Human Relations in this matter.

STATE HEARING OFFICER:

James H. Moe

DATED AND MAILED:

April 21, 1995

MAILED TO:

Appellant Agent or Attorney

William Freeman, Agent
Environmental Management
Consulting, Inc.
801 Atlas Avenue
Madison, WI 53714
(608) 222-4040

Department of Industry,
Labor and Human Relations

Attorney Kristiane Randal
Assistant General Counsel
PO Box 7946
Madison, WI 53707-7946
(608) 267-4433

On August 31, 1994, the appellant filed a request for hearing pursuant to sec. 101. 02 (6) (e) and chapter ILHR 47.53 (1) of the Wisconsin Administrative Code for review of a February 25, 1993, award letter issued by the respondent, Department of Industry, Labor and Human Relations. As a result, the matter was set for hearing.

The respondent moved to dismiss the appellant's request for hearing on the basis that (1) appealed interest costs were not included in any request for reimbursement and therefore were not part of any appealable decision, and that (2) the appeal of denied laboratory charges was not timely filed. The appellant subsequently withdrew that portion of its appeal related to interest costs. The motion is granted regarding the timeliness of the appeal of denied laboratory charges.

The issue for determination is whether the appellant's request for hearing on the denial of reimbursement for laboratory charges should be dismissed because the request for hearing was not filed within 30 days of the issuance of the decision being appealed, as required by ILHR 47.53 (1) (b) of the Wisconsin Administrative Code.

PROPOSED FINDINGS OF FACT

1. On January 31, 1993, ILHR 47 of the Wisconsin Administrative Code was published. ILHR 47.53(1) (b) provides, in relevant part, as follows: "All appeals pursuant to this chapter shall be filed no later than 30 calendar days from the date of the decision being appealed."

2. On February 25, 1993, the Department issued an award letter under the Petroleum Environmental Cleanup Fund Act (PECFA), denying reimbursement for various laboratory charges in the amount of \$4,680.00.

3. On August 31, 1994, the appellant, by its agent, filed an appeal of the February 25, 1993, award letter, requesting reimbursement of denied laboratory charges in the amount of \$1,872.00 .

PROPOSED CONCLUSIONS OF LAW

1. The award letter dated February 25, 1993, issued by the Department was a decision as contemplated under ILHR 47.53 of the administrative code, and was therefore subject to the appeal requirements of ILHR 47.53 (1) (h) of the administrative code.

2. The request for hearing filed by the appellant on August 31, 1994, was not filed within 30 calendar days of the February 25, 1993 decision being appealed, and was therefore not timely filed within the meaning of ILHR 47.53 (1) (b) of the Wisconsin Administrative Code, and the department is without jurisdiction to hold a hearing.

PROPOSED DISCUSSION

The appellant contended that the request for hearing was timely filed because it received no notice of appeal rights or limitations. This contention cannot be sustained. Chapter ILHR 47.53 of the Wisconsin Administrative Code, does not require a notice of appeal rights to be placed on a letter of award or denial. Since the rule was published and available to all persons required to comply with its terms, the rule itself provides sufficient notice of the time limitation on requesting a hearing. Furthermore, State agencies are limited to the express authority conferred by statute and rule, and do not possess implied powers unless such powers are necessary to carry out the express powers. State of Wisconsin (Dept. Admin.) v. Department of Industry, Labor & Human Relations, 77 Wis. 2d 126 (1977). In this case, the department has the express authority to hear appeals brought within 30 days of a departmental decision under the PECFA program. For appeals filed after 30 days, the department lacks the authority to hold a hearing.

PROPOSED ORDER

The respondent's motion to dismiss that portion of the appellant's request for hearing regarding the denial of reimbursement for laboratory charges is granted. That portion of the appeal requesting reimbursement for denied interest costs is withdrawn.

James H. Moe
State Hearing officer